

# Holland & Knight

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April 28, 2022

## VIA ECF

The Honorable Paul A. Engelmayer  
United States District Judge, S.D.N.Y.  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 1305  
New York, New York 10007

Re: *Capri Sun GmbH v. American Beverage Corp.*, 1:19-cv-01422 (PAE)

Dear Judge Engelmayer:

We represent Defendant American Beverage Corporation (“ABC”) in the above-referenced civil action. We write concerning the Court’s notice on April 7, 2022 that the official transcript of the summary judgment hearing held on March 17, 2022 (“Transcript”) has been filed by the court reporter. That notice directed the parties to file a notice of intent to request redaction of the Transcript. *See* DE 183, 184. ABC filed its notice of intent to redact the Transcript on April 14, 2022. *See* DE 190.

ABC now seeks the Court’s approval to redact limited portions of the Transcript. Specifically, the portions ABC seeks to redact are direct quotes from documents the Court ordered to be sealed on June 4, 2021. *See* DE 85, 85-1, 118. Specifically, there are quotes from docket entry numbers 79-136 (Thomas Dec., Ex. 189), 79-141 (Thomas Dec., Ex. 194), 79-142 (Thomas Dec., Ex. 195), 79-143 (Thomas Dec., Ex. 196), and 79-151 (Thomas Dec., Ex. 204) that the Court ordered filed under seal. *See* DE 85, 85-1, 118. Copies of the Transcript with proposed reductions are attached hereto as **Exhibit 1** (with redactions highlighted, filed under seal) and **Exhibit 2** (with redactions, filed publicly).

ABC respectfully submits that good cause exists for redacting limited portions of the Transcript because (1) the portions ABC seeks to redact are direct quotes from documents that have been sealed following the Court’s June 4 Order (*see* DE 85, 85-1, 118); and (2) the portions are direct quotes from documents that fall into categories that further justify redaction. *See Tyson Foods, Inc. v. Keystone Foods Holdings, Ltd.*, No. 1:19-CV-010125 (ALC), 2020 WL 5819864, at \*2 (S.D.N.Y. Sept. 30, 2020) (*quoting Hypnotic Hats, Ltd. v. Wintermantel Enterprises, LLC*, 335 F.Supp.3d 566, 600 (S.D.N.Y. Sept. 28, 2018) and *New York v. Actavis, PLC*, No. 14 Civ. 7473, 2014 WL 5353774, at \*3 (S.D.N.Y. Oct. 21, 2014) for the proposition that “[a]ll of these documents ‘fall[ ] into categories commonly sealed[:] those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.’ . . . Non-public data of this nature ‘is sensitive and potentially damaging if shared with competitors.’”).

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Specifically, the portions ABC seeks to redact are direct quotes from (1) documents that contain internal, confidential and commercially sensitive business communications concerning marketing, existing products, new products, and current or potential customers and/or confidential competitive analysis that, if made public, would commercially or competitively disadvantage ABC, and (2) excerpts of deposition transcripts that discuss the aforementioned documents. This Court has recently noted that “‘Courts commonly find that documents that contain trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like satisfy the sealing standard’” and that “‘[d]ocuments falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.’” *Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-CV-4500-GHW, 2021 WL 1222122, at \*3 (S.D.N.Y. Mar. 31, 2021) (granting motion to seal and quoting *Rensselaer Polytechnic Inst. v. Amazon.com, Inc.*, 2019 WL 2918026, at \*2 (N.D.N.Y. June 18, 2019) and *Cumberland Packing Corp. v. Monsanto Co.*, 184 F.R.D. 504, 506 (E.D.N.Y. 1999)). See also *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (granting motion to redact documents containing advertising expenditures and plans, merchandising strategies, policies, and sales); *Rubik's Brand Ltd. v. Flambeau, Inc.*, 17-CV-6559, 2021 U.S. Dist. LEXIS 53529, at \*2 (S.D.N.Y. March 22, 2021) (granting motion to redact portions of excerpt of deposition and noting that “the proposed redactions cover material that, if disclosed, would competitively harm Flambeau. For instance, a competitor could use information concerning sales figures to upend the puzzle cube market and disrupt the Quick Cube’s business model.”).

Accordingly, ABC respectfully requests that this Court grant ABC’s request to redact certain portions of the Transcript. ABC thanks the Court for its time and consideration.

Respectfully submitted,  
HOLLAND & KNIGHT LLP

/s/ Mark T. Goracke  
Mark T. Goracke

cc: All counsel of record (via ECF)

Defendant's motion to redact is granted. The Clerk of Court respectfully directed to file, on the public docket, a redacted version of the transcript at Dkt. 183, implementing the redactions that defendant has proposed at Dkt. 191 Ex. 2. The Clerk of Court is further directed to close the motion pending at Dkt. 191. SO ORDERED.



PAUL A. ENGELMAYER  
United States District Judge

Dated: April 29, 2022